



Ralph Chamness
Chief Deputy
Civil Division

Lisa Ashman
Administrative
Operations

SIM GILL
DISTRICT ATTORNEY

Jeffrey William Hall
Chief Deputy
Justice Division

Blake Nakamura
Chief Deputy
Justice Division

July 8, 2019

Bradley Penner
MuckRock News
DEPT MR 76116
411A Highland Ave
Somerville, MA 02144-2516

RE: Nicholas Neal Barclay,

Mr. Penner:

I am responding to your recent request for records made pursuant to Utah Code Section 63G-2-101, et seq. ("GRAMA"). You have requested records related to Nicholas Neal Barclay by electronic mail or on a CD-ROM and further requested that you be advised of any fees or costs prior to fulfilling your request.

GRAMA states that a governmental entity may charge a reasonable fee to cover the actual cost of providing a record. See Utah Code Ann. § 63G-2-203(1). That fee may include, among other necessary costs, the cost of staff time for compiling, formatting, manipulating, packaging, summarizing or tailoring the record either into an organization or media to meet the person's request. *Id.* at 63G-2-203(2)(a)(i). We bill staff time at the lowest salary for any person in the office who is qualified to perform the service.

To respond to your GRAMA request the cost is estimated as follows:

-\$26 for 2 hours of time at \$13 an hour to copy photographs and documents to a CD or for transmission via e-mail, if possible (depends on file size), and to redact private and protected information from photographs and documents.
-\$5 for one CD or DVD if unable to transmit via e-mail.
-\$2 for mailing if unable to transmit via e-mail.
Total= \$33.00

If you would like to have your request processed, please make payment by check payable to Salt Lake County and deliver to:

Salt Lake County District Attorney's Office
Civil Division
35 East 500 South
Salt Lake City, UT 84111

If costs are lower than anticipated, we will refund the unused portion of your payment. In addition to payment of fees and costs, GRAMA requires that you provide your name, mailing address, e-mail address if you are willing to accept an e-mailed response, and a daytime telephone number. Your current request lacks one or more of these requirements. Please provide the required information along with your payment. Failure to do so may result in your request being denied.

You have the right to appeal my response. Appeals must be made in accordance with Salt Lake County Policy 2040, a copy of which is attached.

Best regards,

David V. Peña
Deputy District Attorney



SALT LAKE COUNTY
COUNTYWIDE POLICY
ON
GRAMA APPEALS PROCEDURE

Reference --

Government Records Access and Management Act (GRAMA), Utah Code Annotated, Sections 63G-2-401 through 407 & 701

Records Management, Salt Lake County Ordinance, Section 2.82.100

Purpose --

The appeals process provides members of the public with a process for petitioning Salt Lake County to reconsider records request issues.

1.0 Types of Appeals

Members of the public may appeal a decision made by the County concerning:

- 1.1 records classifications
- 1.2 fees charged for records
- 1.3 an agency's response to a records request

2.0 Appeals

- 2.1 Chief Administrative Officer for Appeals
 - 2.1.1 County agencies shall attempt to resolve public complaints concerning records requests informally and at the lowest possible administrative level.
 - 2.1.2 If a requestor is aggrieved by the county's classification of a record, the fees charged for a record, or by an agency's response to a record request, the requestor may request and be granted an initial administrative appeal of that grievance, in accordance with countywide policies and procedures adopted by the council. The initial administrative appeal is made to the agency designee pursuant to countywide policies and procedures adopted by council. Designee shall provide a written decision to the appellant.
 - 2.1.3 If a requestor and a County agency designee cannot resolve a complaint at the agency level, the requestor may submit a written notice of appeal to the Chief Administrative Officer for Appeals ("CAOA"). The notice of appeal shall state the basis of the appeal and the relief requested. The requestor shall file the notice of appeal within

thirty (30) calendar days of receiving an adverse decision from a County agency.

2.1.4 A notice of appeal is considered filed when it is received and date-stamped at the County office of the CAO A designated to respond to the specific records request, located at 2001 South State Street, N2200, Salt Lake City, Utah 84190. No notices of appeal sent by facsimile, e-mail, or any other electronic submission will be accepted.

2.1.5 Upon receiving an appeal notice of an agency decision, the CAO A shall have seven (7) calendar days after the CAO A's receipt of the notice of appeal (or fourteen (14) calendar days after the county sends a notice of appeal to a person who submitted a claim of business confidentiality) to respond to the record request.

2.1.5.1 The county shall send written notice of the CAO A's decision to all participants.

2.1.6 Appeal of a CAO A's decision to affirm an access denial

2.1.6.1 In the event the CAO A affirms the access denial, or fails to respond to the records request within the time limits listed above, the person aggrieved may then appeal the CAO A's decision.

2.1.6.2 An appeal of a CAO A's determination shall be heard by an appeals board, as designated by the county.

2.1.6.3 No later than fourteen (14) calendar days after the notice of the appeal is sent, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the appeals board.

2.1.6.4 The parties to an appeal, including any intervenors, may submit a written statement of facts, reasons, and legal authority to support their position at least fourteen (14) calendar days prior to the appeal hearing date. The parties may not conduct formal discovery prior to an appeal hearing under this section.

2.1.6.5 Any party who needs special accommodations shall notify the appeals board of their needs at least seven (7) calendar days prior to the hearing. Parties may appear telephonically upon application and good cause shown.

2.2 Appeals Board

2.2.1 An appeals board established by the county shall be composed of three members: one of whom shall be an employee of the county; and two of whom shall be members of the public, at least one of whom shall have professional experience with requesting or managing records.

2.2.2 Appeals Board Hearing Procedure

2.2.2.1 At the appeal hearing, the appeals board shall allow the parties to testify, present evidence, and comment on the issues. The appeal hearing shall be guided by the legal rules of evidence. The parties may question and cross examine witnesses and may be represented by legal counsel. The appeals board shall conduct the hearing in accordance with the Utah Open Meetings Act, except as necessary to prevent the disclosure of private, protected, or controlled information.

2.2.2.2 Where the agency's decision is based, in whole or in part, on a classification placed on a shared record by the governmental entity that created the record, the appeals board is bound to uphold the originating entity's classification. The appeals board shall therefore not hear any portion of the appeal pertaining to shared records, but shall summarily uphold the agency's decision as it pertains to shared records.

2.2.2.2.1 In cases where a requestor seeks records created by another governmental entity that were provided to the county, the requestor is encouraged to make a public record request directly to the originating entity.

2.2.2.3 The appeals board may review disputed records, but may not reveal any private, protected, or controlled information during the course of the appeal hearing. If the appeals board finds it necessary to discuss private, protected, or controlled information during the course of a hearing, it may enter into closed session as a quasi-judicial body to avoid disclosure of that information.

2.2.2.4 The appeals board may close the meeting to discuss its decision and order at the end of the hearing so long as it is acting as a quasi-judicial body.

2.2.2.5 The appeals board may uphold, amend, or reverse an agency decision.

2.2.3 Decision and Order

2.2.3.1 No later than seven (7) calendar days after an appeal hearing, the appeal board shall issue a signed order upholding, amending, or reversing the agency action.

2.2.3.2 The appeals board may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access.

2.2.3.3 In making its decision, the appeals board shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect: privacy interests in the case of a private or controlled record; business confidentiality interests in the case of a record protected under the Act; and privacy interests or the public interest in the case of other protected records.

2.2.3.4 The appeals board's final order shall include:

2.2.3.4.1 A statement of reasons for the decision, including legal authority supporting the decision.

2.2.3.4.2 Where applicable, a description of the record or portions of the record to which access is ordered or denied, so long as the description does not reveal private, protected or controlled information.

2.2.3.4.3 A statement that any party to the proceeding may appeal the decision to the state records committee or district court; including a statement that an appeal to the state records committee does not waive either parties' right to seek judicial review of a decision by the records committee.

2.2.3.4.4 A summary of the appeals process, the time limits for filing an appeal, and a notice that

to protect its rights, a party may wish to seek advice from an attorney.

2.2.4 If the appeals board fails to issue a final order within the stated time period, the petitioner's appeal shall be deemed denied. A party shall notify the CAO in writing, and consistent with subsection 2.1.4 of this policy, if it deems an appeal denied.

2.2.4.1 Upon receipt of the written notification that the party deems the appeal denied, the CAO shall then inform the party in writing:

2.2.4.1.1 That any party to the proceeding may appeal the decision to the state records committee or district court; including a statement that an appeal to the state records committee does not waive either parties' right to seek judicial review of a decision by the records committee.

2.2.4.1.2 A summary of the appeals process, the time limits for filing an appeal, and a notice that to protect its rights, a party may wish to seek advice from an attorney.

2.3 Appeal of an Appeals Board Decision

2.3.1 Either the county or the appellant may appeal the appeals board decision to the state records committee or by filing a petition for judicial review with the district court.

2.3.2 A party who appeals an appeals board decision to the records committee does not lose or waive the right to seek judicial review of the decision of the records committee.

APPROVED and PASSED this 8th day of December, 2015.

SALT LAKE COUNTY COUNCIL:

By _____
Richard Snelgrove, Chair

ATTEST:

Sherrie Swensen, County Clerk

Approved as to form and legality:

Deputy District Attorney
Date: _____